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No. 450

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(SUBJECT.)

[illegible] (South Waziristan) – Wana Jalma + Municipal Scheme 22-1/21 – Despatch samoja – Fixing alignment in Encroachment – Defence Secretary

* Not to be filled in the case of permanent records.

A1628

Ref. on 1032-21-V.3. South Kanara Collector's Office,
Mangalore, 8th April 1921.

From

R. H. Ellis, Esquire, I.C.S.,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue, Madras.

Sir,

Suit - 22/21 - Mangalore Munsiff's Court.

I have to report that one Daniel Souza and 3 others --- have filed the above suit against Government and another for a declaration that properties S.Nos.117/1 to 9 & 94/B of -------- Jeppinamogar village belong to them on mulgeni right, that the Government have no right to deprive the Plaintiffs of these -- plots etc.

Plaint para 6 p 6 cf

2. The plaint plots are river accretions formed in the Netravati river. These were ordered by Mr. Vibert in -------- September 1918 to be reserved for assignment to houseless poor. Plaintiffs Nos.1 and 2 and the mother of the 4th Plaintiff had encroached upon S.No.94. The encroachment was reported in -- October 1918 and a notice under section 7 of the Land Encroachment Act was served upon the encroachers in April 1919. This was followed by an order to levy penal assessment; whereupon they appealed to the Divisional Officer contending that the -- plot belonged to them on mulgeni right and during the enquiry that followed they produced before the Tahsildar a certified copy of the decree in O.S.No.440 of 1844 on the file of the -- Sadar Amin Court at Mangalore in support of their contention. This decree describes the warg land as surrounded on all sides

by the river - which description is very elastic and can be - applied to any accretions. No other document was produced in support of the contention. Hence the present Plaintiffs' contention was held to have been not proved and the Tahsildar accordingly reported after personal inspection that the ----- alleged warg claim was false. The Divisional Officer also - inspected the encroachment on 29th May 1920 and came to the - conclusion that the plot was a mere river accretion which is some times added to and some times washed away and of which - no one has possession. During the pendency of this appeal the Plaintiffs with some others encroached on 117/1 to 7. Here also notices under sections 6 and 7 of the Land Encroachment Act were issued and an appeal was filed before the Divisional Officer who informed the appellants that their appeal lay to the Collector. Accordingly an appeal was filed before me in respect of both the survey numbers, which was rejected by me. They next sent a suit notice which also was recorded.

3. The Government Pleader, Mangalore, who was consulted by me is of opinion that the Plaintiffs have no case and that --- Government may well contest their claim. I agree with him.

4. As the burden of proof lies entirely upon the ------ Plaintiffs, I do not propose to adduce any evidence.

5. I enclose copies of the plaint and Government ------ Pleader's opinion together with the Tahsildar's sketches of -- the plaint plots and the survey sketch of S. No. 92 prepared in 1893. The sketches which are submitted herewith in original may be kindly returned.

6. If the Board decides that the suit should be defend the enclosed written statement prepared by the Government --- Pleader, Mangalore, may be approved. The statement prescribe in B. S. O. No. 93 is also submitted.

Form A.—Defence of Suits

Date of the plaint.	Date of service of the summons on the Collector.	Date of Collector's letter.	Date of hearing.	Explanation for delay where a clear fortnight is not allowed to the Board for the consideration of the case.
1	2	3	4	5
9.1.1921.	Served on Government - Pleader, --- Mangalore on 14.1.1921 and received in office on -- 16.1.1921.	8.4.1921.	5.5.1921.	

In the Court of the District Munsiff of Mangalore.

O. S. No. 22/1921.

Between:--

1. Daniel Souza 2. Diog Souza 3. Bonafice Souza 4. Natalia bai. ... Plaintiffs

and

1. The Secretary of State for India in Council
2. Juje Marian Souza. } Defendants.

Plaint under section 26, Schedule I Order VII of Act V of 1908 and section 14 of the Madras Act III of 1905

The above Plaintiffs state as follows.

1. Plaintiffs 1 & 2 are sons of Anton Souza, 3rd Plaintiff son of Marian Souza, 4th Plaintiff is the daughter of Regina Bai; All Plaintiffs reside in Adambukudru of Jeppinamogru village of Mangalore Taluk.

Their address for service is as above.

2. The first Defendant, the Secretary of State for India in Council is represented by the Collector of South Kanara, 2nd Defendant is son of Pascu Souza and resides in Jeppinamogru village of Mangalore Taluk.

3 (a) The property described in schedule A hereto belonged to and was enjoyed by Plaintiffs and their ancestors from time immemorial (more than 150 years ago) along with other properties shown in schedule B, as mulgeni tenants, the same having been obtained by their ancestors from the ancestors of one Nellikai Srinivasa Rao's family which also belonged to them on proprietary or warg right for an annual rent of Rs.36 (20 plus 16). Plaintiffs and their ancestors were paying the same rental and enjoying the lands in schedule A peacefully from generation to

generation notwithstanding that some portion of the mulgeni -- thus leased had gone under water.

(b) That both as part of the warg and as per enjoyment -- from generation to generation the Plaintiffs family were entitled to possess and enjoy the property hereafter too, paying its rent without any molestation from anybody much less the Government which ought to look upon its subjects as its -- children and deal with them justly.

(c) That however, when the Plaintiffs as usual cultivated the A schedule portion when it was available for cultivation -- as was hitherto done, whenever possible the Shanbhogue of the village objected to and wanted a statement from the Plaintiffs as to the reason for their cultivation. The Plaintiffs at once asserted their mulgeni proprietary right and went on.--- cultivating.

(d) That however the Revenue Department took steps under the Land Encroachment Act and Plaintiffs objected and even --- appealed to the Head Quarters Deputy Collector and applied --- for revision to the Collector but all these truthful assertions were of no use as against the unjust acts of the Revenue Department who even levied penal assessment and collected the -- same from Plaintiffs by distraint and by auction on 15.9.1920, and after.

(e) That in course of these proceedings the Plaintiffs --- learnt that the last settlement rough Patta was granted to the said Shrinivas Rao for the property in Schedule A as well as to take Patta for the same. But seeing that the same was --- getting under water now and then he gave up his claim to the -- said A schedule portion. Then the Settlement Department instead of offering a Patta or otherwise to the Plaintiffs the actual --- occupiers quietly kept quiet. If this fact had been brought to

the notice of the Plaintiffs they would have asked for the --- Patta themselves.

(g) In the above circumstances the Settlement Department and the Government ought to have brought this fact of refusal -- to accept patta on the part of the said Shrinivasa Rao and --- asked the Plaintiffs the real occupiers to take patta Not doing this is unjust and cannot affect Plaintiffs.

(h) The Plaintiffs offered to take patta in the above --- circumstances during the above encroachment proceedings. -- Plaintiffs are entitled to claim property even if it be considered to be ~~ones~~ once warg property but subsequently gone under water -- and then again reformed on the site.

(i) In these circumstances the Plaintiffs are obliged --- to bring this suit for a declaration and for other reliefs --- proceeding from this proprietary right and notice under the --- Land Encroachment Act III of 1905 having been given already.

(j) Second Defendant having refused to join the Plaintiffs has been impleaded as a Defendant.

4. The case of action for this suit arose on 15. 9. 20 and since in Adambu kudru of Jeppinamogru village when the penal assessment was collected by distraint.

5. The Plaintiffs estimate the value of the reliefs claimed at Rs. 48/- for jurisdiction and Court fee of Rs. 10/- is paid on the 1st relief

6. Plaintiff therefore prays for a decree and Judgment ---

(a) Declaring that the property described in schedule A hereto belongs to Plaintiffs on their own right (mulgeni) and that they are in enjoyment thereof on such right that the Government have no right to deprive them of their right and possession and that the

Government is bound to recognise the right of the Plaintiffs to possess and enjoy and if necessary by offering the Patta to Plaintiffs and that the Plaintiffs are not bound by the renunciation --- made by their land-lord N. Shrinivasa Rao. This relief is valued at a fixed court fee of Rs.10/- for Court fee and for jurisdiction at ~~Rs~~.

b. Directing the 1st Defendant to refund the amount collected by the Revenue Department on -- 15. 9. 20 and later as penal assessment. This i valued at

c. Restraining the 1st Defendant by means of permanent injunction from levying any assessment interfering with the enjoyment of Plaintiffs. Thi is valued at

1. Awarding costs of suit to Plaintiffs and f Such other and further reliefs as this Court may seem fit.

Letter-from A. J. Lobo, Esq., B.A., B.L., Government -- Pleader, Mangalore.
To-the Collector of South Kanara.
Dated-Mangalore, the 2nd April 1921.

The Plaintiffs base their claim on the ground that the plaint property in Schedule A of the plaint was enjoyed by ---- them on mulgeni along with the property described in Schedule B thereto from the family of one Nellikai Shrinivas Rau and that both the portions in A and B Schedules form warg property of - the said Shrinivas Rau. They say that the plaint portion which contained their house etc. was once washed away by floods but the whole portion was shown in Survey of 1893 as Survey No. 92 and that when patta was given at the Settlement, it was given only to a small portion in B Schedule property -- since the said Nellikai Shrinivas Rau did not want a patta to be given to him of the A Schedule portion.

Two things have to be proved by the Plaintiffs before - they succeed in establishing their claim.

1. That the plaint property was once the warg property of Nellikai Shrinivas Rau's family.

2. That it was obtained on mulgeni by the Plaintiffs' ancestors and it was in their enjoyment as such, all along, -- under the said Shrinivas Rau.

1st Point. The plaint property is evidently a formation from the ~~river~~ river bed. The river is tidal and navigable -- and by the action of the river some times the land submerges - under water and at other times new land is formed. There is no means of knowing that the plaint property was the very ---- property over which any assessment was being levied. With -- regard to the lands, formed by the action of the river and of the river beds, the law is laid down in 25 Madras Law Reports 161 (Secretary of State Versus U. C. Krishna Bhat) in a case from this district that the burden of proof that the bed of a stream is one's own property lies upon the person alleging it,

the presumption being that it belongs to Government. In --- 24 M.L.J. 36 all river beds have been stated to belong to --- Government in the Madras Presidency. There is however a --- dissentient note in 58 I.C., page 689 that riparian owners are entitled to the bed of the river up to the midstream.. It may be stated however that the river concerned in that case was - not navigable at the portion claime However the above said case from this district is more applicable to the facts of -- the present case. It has therefore to be positively shown by the Plaintiffs that the land claimed was once assessed and -- was warg property. The Plaintiffs say that in the survey map of 1893 the land in Survey No. 92 was more extensive than the one to which patta was given at the Settlement in 1902. Here again the extent is not known and it is difficult to make out that the land of Survey No. 92 of the survey map of 1893 was - the identical land said to be granted on mulgeni.

Point 2. The Plaintiffs would seem to have signally failed in proving that the plaint land in Schedule A and that in the Schedule B of the plaint are held by them on mulgeni. The decree in O.S. 440/1844 of the Subordinate Court, Mangalore which they produced before the Revenue Authorities of which a certified copy is to be found among the papers clearly shows that the Plaintiffs are only chalgeni tenants of the said --- Shrinivas Rau though they alleged a mulgeni right which was - found against them. They are ordered to hold up the property at the will and pleasure of Shrinivas Rau's family and to quit the same on payment of value of improvements. If so, their present contention that they are mulgeni tenants seems to be clearly untenable. If according to them the rough patta was offered to Nellikai Shrinivas Rau, the mulgar in 1902 at the Settlement and he refused it, there was no body to prevent -- him from doing so, as the Plaintiffs are only chalgeni tenants and their rights if any being restricted to receive value of improvements which in this case as according them do not -

exist now being washed by floods.

In these circumstances there does not seem to be any -- good ground for the Plaintiffs to bring the present suit and I am of opinion that Government may well contest Plaintiffs' --- claim.

(True Copy)

WWL 9.V.21

Issue Rev 1941

S/1 A 1628/21 ——— Q

Suit (S. Kanara) Mangalore Dt. Munsiff - O.S. No 22/21 —
Jeppinamoga River Accretion Encroachment -
Defence Sanctioned
Rd. No 450/19.4.21
The Board Sanctions the defence of the Suit and approves the draft W.S.

WWL 15/4

18/4/21 Rev 15/4.21

To The Collector Skanara
with 3 Sketches returned - d (S)
Hg. d 14/4

WWL 19/4

Note The Encroachment in this case is in respect of river Accretions. Ordinarily the accretions if they are slow, gradual and imperceptible belong to the riparian proprietor subject to the right of the Crown to impose the Assessment. The exact character of the Accretions in this Suit are not stated. It would seem that they are not sudden. If this is the case the Rule 41 of 7.2.16. Accretions belong to the Crown. The navigability of the river is irrelevant to the point in issue here. It would be material if half the river bed was claimed B.S.O 15 (23), VI, lays down that river accretions are p40. Vol I at the absolute disposal of Govt. The view does not seem to be correct. They belong to the riparian proprietor. The A.P. Madras may be Consulted. Govt
In the Circumstances however the stated by the Collr the Suit may be defended on the G.S proposed.

V. It is unnecessary to discuss the law of accretions. The Plaintiffs' point is that the land is the heavy property of the land holder since it was a River & not that it is an accretion to their land. The written statement like do. If Plaintiffs are not mulgeni tenants, they have a right to sue. As said G.O, their case is weak on the point - 19/4/21

In the District Munsiff's Court at Mangalore.

O. S. No. 22/1921.

Between

Daniel Souza & others. ... Plaintiffs.

The Secretary of State for India
and another. Defendants.

Written statement of the 1st Defendant under Order 8 -- Rule 1 of Act V of 1908

1. The Plaintiffs' suit is frivolous and is not maintainable.

2. The Defendant denies that the plaint property formed -- part of the mulgeni said to have been granted by the ancestors -- of Nellikai Shrinivasa Rao in favour of Plaintiffs' ancestors or that it was ever enjoyed by the Plaintiff's family. The allegation of the Plaintiffs that the plaint property in Sch. A was owned at any time on warg right by the ancestors of Nellikai Shrinivasa Rao and that it was enjoyed along with the property -- in Sch. B on an annual mulgeni rent of Rs. 36/- is false and unfounded.

3. The plaint property in Sch A never formed portion of any warg property at any time but formed part of the river-bed of the Netravati river and is the absolute property of the -- Government to which neither the Plaintiffs nor the alleged -- mulgars can lay any claim. The Plaintiffs therefore have no sort of right whatever to it. The said property has been -- classed in the Settlement as unassessed waste so far back as 1902 and has ever been in the possession of Government.

4. The Plaintiffs however on the strength of their being the tenants of the adjoining land described in Sch. B of the plaint pretended to lay claim to and to encroach upon the -- plaint property in about 1918 and the Defendant coming to know

of the attempt at encroachment took proper proceedings to eject him and to levy penal assessment. The said proceedings are -- perfectly legal and valid and the Plaintiffs cannot question the said proceedings.

5. Assuming however that the plaint property in Sch. A was at one time the warg property of Nellikai Shrinivasa Rao, the -- Defendant denies that the Plaintiffs were the mulgeni tenants -- of the said Shrinivasa Rao but on the other hand they seem to have been only chalgeni tenants of the property described in Schedule B of the plaint. The alleged grant of rough Patta to the said Shrinivasa Rao by the Revenue authorities and the surrender of -- his warg claim to the plaint property even if true, would not -- avail the Plaintiffs in any way but on the other hand would tend to negative the rights of the Plaintiffs to the plaint property.

6. The Defendant denies that the rough Patta to the plaint -- property was granted to Nellikai Shrinivasa Rao and asserts that at any rate since no fair patta was given, no title was vested in the said Shrinivasa Rao and much less in the Plaintiffs.

7. The Defendant denies that the plaint property contained --- fields , house or other buildings at any time and that they were washed away by floods as stated by them. The said allegations are false and unfounded and even if true do not help the Plaintiffs in any way.

8. The Defendant denies that Plaintiffs have any cause of --- action against him and that they were in any way injured by the action of the Revenue Department in the matter of collecting --- penal assessment. The suit is also opposed to section 42 of the Specific Relief Act.

9. The Plaintiffs are not entitled to any of the reliefs --- claimed in the circumstances of the case.'